UNITED
NATIONS

CCPR

International covenant
on civil and
political rights

Distr.
GENERAL

CCPR/C/SR.1239
20 July 1993

Original: ENGLISH

HUMAN RIGHTS COMMITTEE

Forty-eighth session

SUMMARY RECORD OF THE 1239th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 14 July 1993, at 3 p.m.

Chairman: Mr. ANDO

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GE.93-17343 (E)

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Initial report of Ireland (CCPR/C/68/Add.3) (continued)

1. The CHAIRMAN invited the Irish delegation to respond to questions put to it by members at the 1235th meeting.

2. Mr. WHELEHAN (Ireland) said that Ireland's delay in ratifying the Covenant had been occasioned, not by any reluctance to submit its laws and practices to the scrutiny of international bodies - it had, for example, been a party to the European Convention on Human Rights since 1953 - but, rather, by its concern that the absence of certain laws (on incitement to hatred, for example) should first be remedied so as to enable Ireland to comply with the obligations imposed by the Covenant. Ireland had subscribed to the first Optional Protocol at the same time as it had ratified the Covenant.

3. A number of members had raised the question of direct incorporation of the Covenant into Irish law, and of the so-called dualist system. His delegation understood their concerns in that regard, but believed that there were no easy ways to address those issues, which were of long standing, since they also arose in relation to the European Convention on Human Rights.

4. Some members had asked whether the Covenant could be invoked in Irish domestic law. The answer, which followed from the nature of the dualist approach to international law, was that the international instrument itself could not be invoked directly by a litigant before a domestic court. A litigant could, however, invoke the implementing measure that had been made a part of the domestic law. In the case of many conventions and treaties, that measure was a statute enacted by the Oireachtas in terms identical to that of the international instrument. Where the Covenant was concerned, however, that was not the case. The reason lay, not solely in the nature of the dualist approach, but in the combination of that approach with a system affording primacy to constitutional norms which stipulated that all law conflicting with those norms was, to the extent of that conflict, invalid.

5. The option of incorporating the Covenant by way of ordinary legislation, in the precise terms used in the Covenant, was not an attractive one, particularly where those many rights that already formed part of Irish constitutional law were concerned. It would be wholly inappropriate that the same, or virtually the same, legal norm should exist on two different levels of the legal system. The level of ordinary legislation should concern itself either with matters not dealt with by the fundamental law, or with the detailed working out of the principles stated in the fundamental law. Furthermore, a two-level approach would be ineffective. Either the provision in ordinary law differed from the fundamental norm, in which case it was ineffective to the extent that it differed, or it was the same, in which case it was superfluous. Direct incorporation could therefore be achieved only by way of constitutional amendment. There were a number of reasons why such a course should not be lightly embarked upon.

6. First, it did not seem advisable to have two norms - or three, if the European Convention was also incorporated - dealing with the same issue in Ireland's fundamental law. That would, however, be the case in relation to most of the rights under the Covenant if it were to be incorporated directly into the Constitution. Again, the addition of a second provision was likely to prove either redundant or a source of confusion or even conflict.

7. Furthermore, it would be difficult to achieve that result without jettisoning the jurisprudence on human rights built up over the years in the context of the Constitution. Almost 100 cases in which such issues arose were decided every year in the Irish courts. It would be particularly difficult to preserve the jurisprudence in relation to "unspecified" rights if a second provision were to be inserted in the text of the Constitution.

8. There was also the risk that a domestic court would interpret a domestic provision identical to one in the Covenant in a way that differed from the interpretation thereof by the Committee itself. Finally, the process of amending a Constitution by popular vote was a difficult one, and would be particularly hard to justify where no substantive change in the law was sought.

9. The Government of Ireland was of the view that the essential obligation deriving from the Covenant was to give effect to the rights contained therein, but that it was not essential to do so using the precise terminology of the Covenant in every case. The Government believed that it did indeed give effect to those rights, in some cases by means of a pre-existing constitutional guarantee (whether in the same terms as the Covenant or in similar language or by means of terms implied in Ireland's fundamental law by its courts), while in other cases it believed that its pre-existing law had been in compliance with the Covenant. In a few cases, legislative provisions had been enacted with a view to securing Ireland's ratification of the Covenant, so as to give explicit effect to its provisions. The Government considered that to be a practical and satisfactory approach. However, it did not have a closed mind in relation to the Committee's suggestions, and appreciated the extent of many members' concerns in that regard. It would bear those concerns in mind and continue to consider whether appropriate measures could be taken in conformity with Ireland's legal traditions. The Covenant was, like the Irish Constitution, a living document, and the Government was conscious that, in acceding to it, it had undertaken a continuing obligation to examine, and improve where possible, the provisions of its domestic law in the light of the standards laid down by the Covenant.

10. Some degree of confusion had arisen as to precisely what powers were currently in force as a result of the declaration of a state of emergency made in 1976 pursuant to article 28.3.3 of the Constitution. The answer was that the only power currently existing was the power to bring section 2 of the Emergency Powers Act into force by means of a government order. Such an order was not currently in force, and therefore, neither was section 2. It was important to note, in relation to emergency legislation justified by reference to article 28.3.3, that the Constitution was not suspended in relation to every aspect of such legislation. In the case of in re Art. 26 and the Emergency Powers Bill, 1976, [1977] I.R. 159, the Supreme Court had said:

"It is important to point out that when a law is saved from invalidity by Art. 28.3.3, the prohibition against invoking the Constitution in reference to it is only if the invocation is for the purpose of invalidating it. For every other purpose the Constitution may be invoked.

Thus, a person detained under section 2 of the Bill may not only question the legality of his detention if there has been non-compliance with the express requirements of section 2, but may also rely on provisions of the Constitution for the purpose of construing that section and of testing the legality of what has been done in purported operation of it.

A statutory provision of this nature which makes such inroads upon the liberty of the person must be strictly construed. Any arrest sought to be justified by the section must be in strict conformity with it. No such arrest may be justified by importing into the section incidents or characteristics of an arrest which are not expressly or by necessary implication authorized by the section.

While it is not necessary to embark upon an exploration of all the incidents or characteristics which may not accompany the arrest and custody of a person under that section, it is nevertheless desirable, in view of the submissions made to the Court, to state that the section is not to be read as an abnegation of the arrested person's rights, constitutional or otherwise, in respect of matters such as the right of communication, the right to have legal and medical assistance, and the right of access to the courts.

If the section were used in breach of such rights the High Court might grant an order for release under the provisions for habeas corpus contained in the Constitution. It is not necessary for the Court to attempt to give an exhaustive list of the matters which would render a detention under the section illegal or unconstitutional."

11. A further question arose as to whether the courts could review the existence of the state of affairs underlying the declaration of a state of emergency. In the case already quoted, the Supreme Court had expressly reserved that question for future determination and it was therefore possible that in an appropriate case the courts would be prepared to review such an issue.

12. A number of members of the Committee had asked why Ireland had not derogated from its obligations under the Covenant pursuant to article 4. The answer was that the emergency measures adopted pursuant to the current state of emergency did not, in Ireland's opinion, involve the State in any breach of its obligations under the Covenant, and that consequently no derogation under article 4 was required.

13. The existence of the Special Criminal Court was based, not on the 1976 declaration, but on a separate proclamation pursuant to the Offences Against the State Act, 1939, and article 38.3.1 of the Constitution, that the ordinary courts were inadequate to secure the effective administration of

justice and the preservation of public peace and order. Both the existence of a state of emergency and the need for the Special Criminal Court had been queried by certain members. He wished again to stress that the State, the rule of law and democracy were threatened by an ongoing campaign related to the problem of Northern Ireland. The continuing destruction and killings undermined the rule of law and democracy. The measures taken were, in the view of the Irish Government, appropriate, and were designed to ensure the fundamental rights of citizens. All those measures were subject to judicial control and were kept under continuous review by the Government.

14. With specific regard to the Special Criminal Court, there had been bombings of courthouses and an escape from a courthouse using explosives, and it was necessary to provide armed police protection for judges serving on the Special Criminal Court. Threats had been made against the lives of judges, members of the judiciary in Northern Ireland had been singled out for attack, and a number had been murdered by the Provisional IRA. The Government would very much wish not to have found it necessary to resort to measures of that kind, if only because it enabled terrorist organizations to claim that they had achieved a victory by forcing the adoption of such measures. He wished to emphasize that the Special Criminal Court differed from the ordinary courts in only two respects. First, there was no jury. Secondly, instead of one judge there were three judges. In every other respect there was no difference. The same rules of evidence and legal representation applied, and the decisions of the Court were reviewable by the Court of Criminal Appeal.

15. On policing and related matters, some members of the Committee appeared to be under a misapprehension regarding the period for which persons could be detained. The police were allowed, under strict conditions, to detain a person for a maximum of 48 hours. At the end of that period, the person must be released or charged in court. Very stringent regulations must be adhered to while a person was in custody in a Garda station. The member in charge of the station was given specific responsibility for ensuring that those regulations were complied with and that the person in custody was not ill-treated. The member in charge must also keep a detailed record of the procedures followed in relation to the person in custody. Inter alia, the arrested person must be told in ordinary language of the offence or other matter in respect of which he had been arrested, and informed that he was entitled to see a solicitor and to make a telephone call of reasonable duration. Those regulations were statutory.

16. It had been asked whether persons could be forcibly detained by the police without a formal arrest. Such a practice was not lawful in Ireland. Dunne v Clinton [1930] I.R.366 had held that there was no half-way house between the liberty of the subject, unfettered by restraint, and an arrest. In The People (Director of Public Prosecutions) v Shaw [1982] I.R.1, Walsh J. had said that "if there exists a practice of arresting persons for the purpose of assisting the police in their inquiries it is unlawful. In such circumstances the phrase is no more than a euphemism for false imprisonment." Were the police to engage in such a practice, not only would confessions obtained by them be inadmissible but an action for damages would lie.

17. Questions had been asked about the staffing of the Police Complaints Board. There had been a problem some years previously, but additional resources had been made available. The annual report of the Complaints Board for 1991 had recorded that, with the provision of additional staffing resources, the Board now had available the complete staffing structure and resources needed to enable it to meet in full its statutory role under the Act.

18. One member of the Committee had asked what were the "extraordinary circumstances" referred to in paragraph 62 of the Irish report (CCPR/C/68/Add.3) in which an unconvicted person could be punished. The answer was clear from a reading of the full passage in the judgement in the O'Callaghan case from which the statement in paragraph 62 had been taken. That case had been concerned with the circumstances in which bail could be refused to a person awaiting trial. The court had found that to deprive a person of bail on the grounds that he was likely to commit further offences was impermissible. In the words of Walsh J. in the Supreme Court:

> "In this country it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter upon which he has not been convicted or that in any circumstances he should be deprived of his liberty upon only the belief that he will commit offences if left at liberty, save in the most extraordinary circumstances carefully spelled out by the Oireachtas and then only to secure the preservation of public peace and order or the public safety and the preservation of the State in a time of national emergency or in some situation akin to that."

In its context, therefore, the finding amounted to a statement in favour of the liberty of the individual, rather than restricting it.

19. It had been asked what was meant by "social function" in the second sentence of article 40.1 of the Constitution (the sentence which qualified the general statement of equality before the law). Basically, the intention behind that sentence was to say that the principle of equality meant not only that like cases should be treated alike, but that cases which were unalike should be treated differently. It sought to limit the circumstances in which legislation might validly make such distinctions to those where there were "differences of capacity, physical and moral, and of social function". The effect was that "article 40 does not require identical treatment of all persons without recognition of differences in relevant circumstances. It only forbids invidious discrimination" (per O'Dalaigh C.J. in O'Brien v Keogh [1972] I.R. 144). That case, which had related to the different limitation periods for the bringing of actions by infants in the custody of a parent to those applying to infants not in such custody, had regarded the distinction made by the legislation between such infants as one related both to moral capacity and to social function.

20. Other examples of differences in social function included the difference between a father of a child begotten by an act of rape and a father who was married to the mother of the child (The State (Nicolau) v An Bord Uchtala [1966] I.R. 567), or the difference between a police officer acting as a prosecutor and an ordinary member of the public doing so (Dillane v Ireland

unreported, cited in Kelly, The Irish Constitution (second ed.) at p. 456). Of course, the presence of a difference in social function did not end the matter. It did not mean that any discrimination related to that difference could be justified. The legislation must have "due regard" to the difference. The Court could still find the distinction to be arbitrary, excessive or disproportionate. But the absence of a difference in moral capacity or social function would cause a discrimination or a distinction to be regarded as breaching the equality principle.

21. The Committee had requested clarification of the fifth sentence of paragraph 245 of the initial report. In Northern Ireland, generally speaking and with some exceptions, the Protestant population were unionist (supporters of the union with Great Britain) and considered themselves British by nationality, whereas Roman Catholics were generally nationalist in politics and regarded their nationality as Irish. Those patterns would also have applied, though to a lesser extent, in the south of Ireland before 1922. In the current jurisdiction, however, it appeared (no scientific survey of the question being available) that the minority religions supported political parties right across the spectrum. There were Protestant, Jewish and Muslim members of the Oireachtas, in at least four different political parties, and members of the minority religions did not appear to exhibit a pattern of party allegiance different to that of the population as a whole.

22. Several members had asked for information regarding the prohibition of torture in Ireland. As already stated, legislation was in preparation that would enable Ireland to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Allegations of assault and similar treatment made against members of the Garda could be investigated by an independent body or, if the person making the allegations so wished, proceedings could be taken in the High Court. Disciplinary action could of course be taken against any member of the Garda found to have misbehaved, and, in addition, compensation would be paid. The courts had held that one of the unspecified personal rights under the Constitution was a right not to be tortured. There had never been a finding of torture either in the Irish courts or before any competent international tribunal.

23. On prison matters, including the availability of segregated facilities for women and young offenders, he had already indicated that prison policy was under review. With regard to the psychological services available, the number of psychologists was being doubled. Psychiatric services were available to all prisoners, such services being supplied by the local Health Boards.

24. The question of imprisonment for debt had been raised. No person was imprisoned in Ireland simply for inability to pay money due. If the question of enforcement of a debt arose, the District Court conducted a thorough examination of the person's means, to establish whether or not that person was in a position to pay. If after that examination the Court was satisfied that there was capacity to pay, it might order payment in one or more instalments. The District Court orders were subject to appeal to the Circuit Court, and to review in the High Court. Only after refusal to pay at that stage did the question of imprisonment arise, and then, since the Court had satisfied itself that there was capacity to pay, the imprisonment resulted from failure to obey a court order, not from inability to pay the debt.

25. He noted the comments made by some members concerning the declarations required to be subscribed to by the President and by judges on their appointment. No similar declaration was required to be made by Ministers of the Government. His delegation would reflect further on how those provisions should be viewed in the light of the guarantee of freedom of conscience and non-discrimination on grounds of religious belief in article 44.2 of the Constitution, and in the light of the obligations in the Covenant.

26. Legal aid was available in serious criminal cases, namely, those in which there was a risk that an accused person might be imprisoned. An independent Legal Aid Board funded civil cases on a means-tested basis. There had been complaints that the Legal Aid Board was inadequately resourced. The 1993 provision for the scheme had been increased to £3.2 million from £2.6 million in 1992. The number of law centres had been increased from 12 to 16. There was also a government commitment to establish the scheme on a statutory basis and to increase its funding.

27. The Government was committed to making changes in the law in the area of treatment of non-nationals. In response to certain concerns expressed by Committee members, he pointed out that in a recent case an Algerian national who had challenged a decision to deport him had been legally aided to bring his case to the Supreme Court and challenge the constitutionality of the relevant legislation.

28. On censorship of books, films and videos, he said that the operation of the legislation was subject to judicial control, that the criteria were set out in legislation and that appeal mechanisms were available.

29. Political parties must be registered with the Clerk of the Dail, who was required to register any party applying for registration that was, in his opinion, a genuine political party organized to contest a Dail, European or local election in the State or in part of the State. If the application was rejected, an appeal could be made to the Appeal Board, which consisted of a judge of the High Court and the Chairmen of the Dail and of the Seanad. It had been asked how many political parties in Ireland were illegal. The answer was none.

30. There was no legal prohibition on civil servants taking strike action. Regarding their participation in politics, the Electoral Act, 1923, provided that a civil servant should be incapable of being elected to or sitting as a member of the Oireachtas unless he or she was by the terms of employment expressly permitted to be a member. The terms of employment of civil servants did not currently contain any such express permission. All civil servants above clerical level were debarred from engaging in politics.

31. A member of the Committee had raised a question concerning article 41.2 of the Constitution. That article had been the subject of public debate in Ireland. It had been criticized because many people found the assumptions in the text objectionable, but it had never in fact been judicially interpreted to justify discrimination against women. The Second Commission on the Status of Women, in its report of February 1993, had recommended the deletion of article 41.2.2, and an amendment of the Constitution to prohibit all forms of discrimination, either direct or indirect, based on sex. As previously

stated, the Government was preparing comprehensive anti-discrimination legislation which would explicitly cover the categories of sex, marital status and parental status. Whether there was a need for constitutional amendments as recommended by the Second Commission on the Status of Women would have to be determined in the light of the efficacy of the anti-discrimination legislation.

32. Although sex equality had been dealt with in the Irish report under article 2 of the Covenant for the sake of brevity, it was clear that sex equality and women-related issues were relevant to many other articles of the Covenant, and a mechanism had been established at national level to promote sex equality awareness among policy-makers. Details of the existing employment equality legislation and its proposed reinforcement and extension to cover other equal status issues had already been given. The equal treatment of women and men in social security was based on the implementation in domestic law of EEC Directives 76/207, 86/378 and 86/613.

33. Twenty years after the enactment of equal pay legislation, women's average hourly earnings in Ireland were only 68 per cent of those of men - an intractable problem which no country had managed to resolve. The occupational crowding of women in low-wage jobs, for example in the clothing industry, and the fact that women were more likely to have an interrupted career were some of the reasons for that imbalance in Ireland. Efforts were, however, being made to tackle the problem by encouraging girls to study a broader range of subjects at school, training women in non-traditional careers and promulgating effective maternity protection legislation to lessen the need for interruption of a woman's career.

34. Under the general heading of family-related issues, he said that the Supreme Court had interpreted article 41 as referring only to families based on marriage. The protection of other families was based on statute law rather than on the Constitution, thus equalizing as far as possible the two categories. The Status of Children Act, 1987, placed the rights of children born outside marriage on a par with those of children born within marriage vis-à-vis their parents, except that the father was not automatically the legal guardian in the former case. Cohabiting couples were treated on the same basis as married couples for social security purposes.

35. In recognition of the reality of marital breakdown, a deserted wife's allowance had been introduced more than 20 years previously as an income support measure. Eligibility was determined either on a social insurance or social assistance basis. A social assistance allowance for unmarried mothers had been introduced in 1973, payable until the child reached 18. Both the deserted wife's allowance and the unmarried mother's allowance had been subsumed into a lone parent's allowance scheme with effect from November 1990, amalgamating the unmarried mother's allowance. the widow's (non-contributory) pension, the deserted wife's allowance, the prisoner's wife's allowance, the widower's (non-contributory) pension, and the deserted husband's allowance. Separated persons, unmarried fathers and husbands of prisoners were now eligible under the new scheme.

36. Figures for 1991 indicated that one in six births in Ireland took place outside marriage. While there was no divorce in Ireland, a significant number of persons were living in non-marital relationships. The 1986 census had revealed a total of about 37,000 persons whose marriages had for some reason broken down, and the most recent population estimate included in the 1991 labour force survey suggested a figure of about 47,000. Those figures might, however, represent an understatement, since in some broken marriages the spouses might not have separated physically and cases where the spouses had gone through divorce proceedings outside Ireland and subsequently remarried were not included.

37. The Irish Government fully supported adoption of the declaration on violence against women and the definitions and measures outlined in it. Ireland had co-sponsored the recent resolution on the declaration adopted by the United Nations Commission on the Status of Women and had strongly supported the declaration approved at the Vienna World Conference on Human Rights.

38. As in other countries, the incidence of violence against women in Ireland reported to the authorities was rising. It was very difficult to obtain an accurate assessment of the real extent of domestic violence, but one positive development had been the close and effective liaison between the Garda Siochana and organizations providing support to abused women. A module dealing with violence against women had been included in Garda Siochana training, covering in particular the sensitive handling of victims. The Criminal Law (Rape) (Amendment) Act, 1990, had strengthened the law in relation to rape-related offences, making rape within marriage an offence and stipulated that cases of alleged rape must in future be tried in the High Court. The Criminal Justice (Unduly Lenient Sentences) Act, 1993, had provided for appeal against such sentences and imposed an obligation on courts, when determining sentences for sexual and violent offences, to take into account the effect on the victim. The Act had also empowered the courts to order a convicted person to pay compensation to the victim. In addition to the criminal penalties available in cases of domestic violence, the law afforded special protection to married couples. An order barring the abusing spouse from the family home could be granted by the District Court on application by the abused spouse. Consideration was currently being given to the possibility of extending the legislation to cohabiting couples.

39. The State recognized the important role of the Council for the Status of Women as the representative of women's interests and concerns. Almost the entire budget of the Council, £114,000 in 1993, was provided by the Government. The Council was, however, completely independent of the Government on policy issues, being answerable only to its constituent organizations. It was an informed and constructive critic of government policy, which its representatives regularly discussed with ministers and senior policy-makers.

40. All seven recommendations in the First Statement to Government of the Second Commission on the Status of Women had already been or were in the course of being implemented. A guide to the Commission's report, listing all 210 recommendations in full, would be made available to the secretariat for consultation by interested members.

41. In regard to the human rights education of children up to the age of 12, the Report of the Review Body on the Primary Curriculum (Department of Education, 1990) had identified the following as being among the aims of primary education: "To help children to understand the society and environment in which they live, the interdependence of people and nations and to foster a spirit of cooperation and the capacity and willingness to contribute in a critical but positive manner towards the development of society, and to help children to respect, appreciate and understand their own and other cultural identities".

42. The Junior Certificate syllabus for civics for children over 12 contained the following guidelines: "The course will have as a prime objective the teaching of the young citizen to recognize and obey the lawful authority, to help preserve law, order and discipline, to respect private and public rights and property and to be ready to defend the national territory should the need arise. It will at the same time try to inculcate as fully as possible an understanding and acceptance of the principles of personal liberty, of justice, of freedom and of the brotherhood of mankind".

43. The teaching of human rights, including coverage of international human rights agreements, formed part of legal and professional study courses in third level institutions. The Government was satisfied that there was a strong interest in and awareness of human rights issues in the community, as had been attested by the various non-governmental organizations (NGOs) in their submissions to the Committee.

44. The Department of Education made no distinction between different religious denominations when allocating State aid to schools at primary and post-primary levels. The majority of schools receiving support from the State would be likely to belong to the various Christian denominations (Catholic, Church of Ireland, etc.), but the State supported in exactly the same way multidenominational schools, a number of Jewish schools and also a recently established Muslim school in Dublin. The possible contradiction in the Rules for National Schools, 1965, between the requirement for primary teaching permeated by a religious ethos and spirit and the right of parents not to have their children present during religious education was well understood, and a vigorous national debate was currently taking place on that issue.

45. The use of corporal punishment in schools was prohibited absolutely at all levels and in all circumstances.

46. In line with a government commitment, a Green Paper (consultative document) on mental health had been published in 1992. That had been followed by examination of submissions from the general public and consultations with all interested parties; the Department of Health was now preparing proposals for new mental health legislation, covering among other areas revised regulations on the detention of persons with mental disability, a new legal framework to safeguard a detained patient's right in relation to certain categories of treatment and other general safeguards for the mentally disabled. A Mental Health Review Board had also been proposed which would review every decision to detain a person in a mental health facility and also cases of long-term detention.

47. All citizens, including travellers, enjoyed the constitutional right to freedom of movement. There was no legislation in Ireland which would empower the Garda to detain travellers because of their nomadic lifestyle. Travellers were known to have higher mortality rates and, consequently, a shorter life expectancy, than the population as a whole, their high accident rate and above-average susceptibility to congenital problems being significant contributory factors. Travellers who remained nomadic had higher mortality rates, especially women, than those who had opted for housing. The burden of managing domestic responsibilities in a physically difficult environment weighed particularly heavily on traveller women, and their high birth rate tended to exact a physical toll. As stated previously, the Task-Force on Travellers would be addressing those and other problems.

48. Health provision for travellers was available under the General Medical Service Scheme. The contract signed by general practitioners under the scheme provided for all eligible persons to obtain a full range of medical services in another area. Residence lasting less than three months was deemed to be temporary residence. After three months, persons would be required to give up their medical card in their local area and re-register.

49. A National Education Office for Traveller Children had been set up in 1991 with the task of determining needs and promoting and facilitating the education of traveller children. Traveller parents had the option of enrolling their children in ordinary classes in primary schools or in special classes attached to normal schools. A number of Junior Training Centres had been set up at the secondary-school level with the aim of tackling the problem of early school-leavers. A further tier of training centres would provide occupational and educational training for travellers in the 15-25 year age-group.

50. No travellers were known to hold public office, probably due to the marginalization outlined in the report. A traveller candidate had stood unsuccessfully in a recent general election and attracted an impressive number of votes. There was a growing awareness among travellers of their own rights and cultural heritage. It was hoped that that would facilitate their participation in public life. Nothing in electoral law prohibited travellers from voting, although the names of those following an entirely nomadic lifestyle might not be on the electoral register.

51. In regard to the impact on human rights of the situation in Northern Ireland, he had already outlined the special measures taken to counter the threat from subversive organizations and in particular from the Provisional IRA. Those measures had all been applied within the framework of the law. The Irish Government was committed, together with the British Government, to the full implementation of the Anglo-Irish Agreement of 1985. The Anglo-Irish Intergovernmental Conference, established by that Agreement, provided a forum for discussion of a range of questions which included security, legal issues and matters relating to human rights. The Government also wished to see an urgent resumption of talks on the problem of Northern Ireland with the aim of achieving an agreed basis within which the nationalist and unionist traditions could live together in peace and reconciliation to the benefit of all Irish people.

52. In connection with the reservations made by Ireland to various articles of the Covenant, the Committee would be aware that the reservation made to article 6 (5), relating to the death penalty, had been withdrawn.

53. As stated previously, the Government intended to bring forward very shortly legislation to deal with the question of alleged miscarriages of justice and to provide a legal right to compensation once a miscarriage of justice had been proved. The enactment of that legislation should enable Ireland to withdraw a second reservation, namely that made to article 14 of the Covenant.

54. Ireland had made an interpretative declaration on the subject of the dissolution of marriage in connection with article 23. It was the Government's intention to hold a referendum in 1994 to enable the Constitution to be amended so as to permit the enactment of divorce legislation, provided that the outcome of the referendum was positive. It would then be possible to withdraw the reservation made to article 23. The need to maintain the remaining reservations would be kept under continuing scrutiny by the Government with a view to their withdrawal as soon as possible.

55. The CHAIRMAN, thanking the Irish delegation for its very comprehensive replies to the points raised by the Committee, warmly welcomed the Irish Government's contribution to a constructive dialogue with the Committee.

56. Mr. WENNERGREN said that although, inevitably, a number of specific points had remained unanswered, it was abundantly clear that the rule of law was firmly established and human rights respected in Ireland. The Irish legal system had certain particular features, partly due to the ongoing situation in Northern Ireland, which had resulted in unusually wide discretion being granted to the police, for example in the Public Order Act, 1993. Under those circumstances it was essential to have firm rules and guidelines for the police, for example in connection with arrest, detention and the use of firearms. One particular aspect still requiring examination was the practice of bringing in suspects for examination without charge, which had been declared unlawful on many occasions but had nevertheless not been eradicated. At the same time, the Emergency Powers Act had authorized a number of actions which could be held to derogate from various articles of the Covenant.

57. There were a number of other points which he would like to bring to the attention of the Irish delegation. It was disappointing that no mention had been made of the important principle of habeas corpus. In another field, however, the adoption of the Mental Health Act would greatly ease the life of mental patients and bring Ireland into conformity with the general practice in Europe. The situation of asylum-seekers had been highlighted by the unfortunate events at Shannon Airport, where the behaviour of Customs, immigration and police officials towards Kurdish refugees had been seriously lacking in respect. The imprisonment of persons for debt was incompatible with article 11 of the Covenant and should be prohibited. In the Junior Certificate syllabus for civics, to which reference had been made, the teaching of the freedom and brotherhood of mankind should in his view have been placed first rather than last, since it was a subject which has all too often forgotten.

58. Mr. HERNDL warmly welcomed the withdrawal by the Irish Government of its reservation in regard to capital punishment. He was aware of the characteristics of a dualist legal system such as that of Ireland, but it was essential when applying the law of the land that the provisions of the Covenant should not be forgotten. Like Mr. Wennergren, he was concerned at the existence of imprisonment for debt. Greater emphasis should be placed on administrative measures to ensure payment, such as distraint.

59. It was essential to ensure that any new legislation was in conformity with international obligations assumed by the State in question. The Criminal Justice Public Law Bill, for example, which was currently before Parliament, included wilful obstruction as an offence punishable by a fine, which might be found not to be compatible with the provisions of article 21 of the Covenant on the right of peaceful assembly.

60. Mr. MAVROMMATIS said that the report, its oral introduction and the very satisfactory responses to questions, including his own, had left him in no doubt as to the healthy respect that existed in Ireland for human rights and fundamental freedoms.

61. Members of the Committee had been pleased to note that the Irish authorities would be reconsidering certain aspects of the so-called "dualist" system of implementation of the Covenant in the light of their queries and comments. It was his own feeling that when - as was greatly to be hoped - the state of emergency came to an end, Ireland would see that it was in the company of very few countries where there was no Bill of Rights or where the provisions of the Covenant were not embodied in domestic law; perhaps heightened awareness of that would lead to remedial action without further delay.

62. Given the seriousness of the circumstances that had resulted in the state of emergency and its prolongation, it must be acknowledged that the measures taken in Ireland were far from Draconian, with one exception: the police forces appeared to enjoy more powers than was the norm in European countries. That was a matter which, to his mind, also merited reconsideration, especially with regard to "offences relating to public order", where he assumed that legislation was intended to be permanent and not just for the duration of the emergency.

63. Members of the Committee had also noted with satisfaction the proposed new measures in relation to miscarriages of justice, especially with regard to compensation. There remained, however, the question of the adequacy of the common law system in a number of respects, notably in preventing such miscarriages.

64. Welcoming the announced measures in regard to such matters as divorce, freedom of choice and the right to life of the unborn, and censorship, he found, on the other hand, that there was room for improvement in the implementation of article 25 of the Covenant, relating to the political rights of citizens, especially where members of the civil service were concerned.

65. Generally satisfactory replies had been given to questions about the travelling community; he would merely suggest that it should not be impossible to devise ways and means of placing travellers on the electoral roll.

66. All in all, the dialogue between the Committee and the Irish delegation had been of high quality, and that was a cause for gratification.

67. Mrs. EVATT joined in commending the comprehensive and detailed responses by the Irish delegation to the Committee's questions and comments; many concerns had been allayed, and, for her part, she merely wished for a few moments to pursue the dialogue.

68. It was clearly Ireland's firm intention to comply with both the letter and the spirit of the Covenant; she especially welcomed the importance attached to education in human rights and the willingness to involve NGOs in the preparation of material for submission to the Committee. As a citizen of a common-law country herself, she appreciated the problems inherent in the dual system of implementation. Guarantees, whether national or international, were important, and she believed that Ireland would continue to be beset by a potential incompatibility, if only in certain areas, between its own Constitution and laws and the provisions of the Covenant; there must, therefore, also be the potential to resolve such incompatibility, perhaps through legislation in a Bill of Rights form for certain provisions of the Covenant.

69. Welcoming the substantiated response provided by the Attorney General in respect of the "social function" mentioned in article 40.1 of the Irish Constitution, she nevertheless continued to believe that there was a danger of unwarranted assumptions in that connection.

70. She was pleased that a review of the prison system was under way; that was particularly important as far as women and young offenders were concerned, and it was to be hoped that the United Nations Standard Minimum Rules for the Treatment of Prisoners would be invoked in that connection.

71. Concerning equality of the sexes and more particularly article 41.2 of the Irish Constitution, she submitted that a problem of misplaced assumptions persisted there as well; she was glad that the Commission on the Status of Women had recommended the deletion of that article, as well as other reforms. It was to be hoped that the intention to enhance sex equality awareness among policy-makers would be extended to cover law enforcement agencies, the legal profession and the judiciary.

72. It was also gratifying that the question of the definition of the family had been addressed in the context, inter alia, of social security; she suspected, however, that a number of disadvantages persisted as a result of the absence of divorce, notably in regard to property rights and financial interests. The announced legal reforms with regard to violence in the family were promising, but any laws in that connection should also be applicable to cohabiting couples. Also with regard to violence, the banning of corporal punishment was to be welcomed.

73. The Committee would always be greatly exercised by matters relating to the liberty of the subject and the rule of law. But while the Irish delegation should realize that the state of emergency, special criminal courts, protection from torture, legislation on public order and other issues would remain under the Committee's close scrutiny, the report had demonstrated progress in many areas, and in the review of reservations, and held out serious prospects that by the time of the next report many outstanding problems would have been resolved.

74. Mr. AGUILAR URBINA said that his initial impression of the excellence of the report had been reinforced by the Irish delegation's oral introduction and its responses to the Committee's questions. Ireland obviously attached great importance to the Covenant; his own confidence in the commitment of that country's judiciary to respect for civil and political rights was in no small way due to the contribution by such eminent authorities as Walsh and O'Dalaigh, whose rulings were referred to time and time again in the information provided both by the Government and from non-governmental sources.

75. That being said, some doubt persisted in his mind as to the effect of article 28.3.3 of the Irish Constitution (concerning the securing of public safety in time of national emergency) on the exercise of human rights. The assurance had been given that those rights were not infringed; but it seemed that the article could lend itself to different interpretations. A clear enumeration of the rights which might under no circumstances be suspended would be reassuring, as would a clearer explanation of the regulation of the emergency laws.

76. The need for the Special Criminal Court had been substantiated by the Attorney General on the grounds, inter alia, of attacks on members of the judiciary in Northern Ireland. But how could a legal decision in the Republic be justified by acts taking place outside its jurisdiction?

77. He also remained concerned about the matter of the banning of broadcast (especially televised) interviews with persons who were members of Sinn Fein, a duly constituted political party in the Irish Republic. Surely such prohibition was an instance of discrimination, and at variance with the provisions of article 19, and perhaps of article 25, of the Covenant?

78. Well aware, as a Roman Catholic himself, of the seriousness of the matter, he nevertheless expressed considerable concern at the notion that blasphemy could - especially in a country committed to the defence of republican freedoms - be construed as a threat to public order and possibly deemed a punishable offence. He further believed that censorship in Ireland might on occasion be applied in an excessive manner, as for example in the seizure of personal documents at Customs posts.

79. Concerning education for human rights, he stressed the importance of extending such education, with special reference to the European Convention on Human Rights as well as to the Covenant, to members of the Garda.

80. The response to questions about legal aid had been reassuring, although the Committee would certainly welcome confirmation that proper defence could be made available as part of such aid.

81. He endorsed the comment by Mr. Mavrommatis concerning the desirability of ensuring that members of the travelling community could exercise the right to vote.

82. He thanked the Irish delegation for its cooperation, assuring its members that the Committee's principal concern in addressing countries' periodic reports was not to accuse, but rather to engage in positive, mutually helpful and companionable dialogue.

83. Mr. EL SHAFEI thanked the Irish delegation for having provided the Committee with a clearer understanding of the situation in Ireland with respect to the rights enshrined in the Covenant. The Committee had enjoyed the constructive dialogue shared with the Irish delegation and was greatly heartened by the assurances given by the Attorney General that the concerns expressed and the observations made would be promptly conveyed to the Irish Government.

84. While Ireland's ratification of the Covenant and the first Optional Protocol undoubtedly represented a significant step forward, it appeared that those instruments were not widely known in Ireland, as borne out by the very few communications received under the Optional Protocol to date. The Committee therefore recommended the launching of appropriate educational campaigns so as to ensure wider dissemination of information on the subject. He welcomed the fact that the report had been published in an easily readable format and made available to the general public, thereby arousing increased interest among NGOs in Ireland and worldwide. The documentation prepared by those organizations had proved invaluable to the Committee in its work.

85. He noted with satisfaction that since the publication of the report the Irish Government had signed, ratified or acceded to a number of other important international human rights instruments, including the Convention against Torture and the Convention on the Rights of the Child.

86. He also welcomed the priority accorded by the Irish Government to the updating of domestic legislation, relating inter alia to the criminal justice system, the family and the treatment of refugees and asylum-seekers, so as to bring it into line with the provisions of the Covenant.

87. While the Attorney General's response to queries concerning the legal status of the Covenant within Ireland's constitutional and legal framework had proved enlightening in some respects, a number of difficulties remained to be resolved. Article 29 of the Irish Constitution precluded the Irish courts from giving effect to duly ratified international agreements such as the Covenant which accorded rights and imposed obligations in addition to those provided for by domestic legislation. He shared the Attorney General's view that the amendment of the Constitution by popular vote would be a difficult process, but expressed the hope that the Irish Government would fulfil its obligations under the Covenant by the continual review and improvement of national legislation where possible. In that connection, he stressed the importance of the implementation of appropriate international standards, as highlighted by the recent World Conference on Human Rights.

88. Furthermore, although the Attorney General's explanations concerning the state of emergency in Ireland had to some extent allayed the Committee's apprehension on the subject, he hoped that the Irish delegation would none the less convey the concerns expressed regarding the very restrictive draft bill of law before the Irish Parliament. He wondered how the Attorney General's remark that none of the rights in the Covenant were derogated from under the state of emergency could be reconciled with legislation along the lines proposed in the draft bill in question, if sanctioned by Parliament.

89. Another matter of concern raised by the Committee which must be addressed was the ban on interviewing representatives of certain groups associated with the conflict in Northern Ireland despite their status as legal political parties.

90. In conclusion, he said he looked forward to the publication of Ireland's second periodic report in the firm expectation that considerable progress would have been achieved by that time.

91. Mr. PRADO VALLEJO said the initial report, together with the introductory remarks by the Attorney General and his subsequent replies to questions raised by the Committee, provided a good overall picture of human rights problems in Ireland. In general he was satisfied that most of the rights enshrined in the Covenant were well protected in the country. In particular, he welcomed the continual review of domestic legislation in order to bring it into line with the provisions of the Covenant. Ireland was clearly taking its obligations under that instrument very seriously, and had amply demonstrated that it had the political will required to achieve that end.

92. None the less there remained several major areas of concern. The first was the abuse of human rights by the Garda. Prior to the submission of the report, the Committee had received information on a regular basis from a number of sources which indicated an increase in such abuses. The possibility of providing suitable instruction on human rights for police officers must therefore be looked into.

93. Moreover, current restrictions on trade union activities and the power of workers to negotiate with employers also required further consideration with a view to some improvement.

94. Many Committee members had also expressed concern regarding the excessively restrictive legislation on abortion as well as the related issues of the situation of the family and the right to divorce. As a citizen of Ecuador, which had been one of the first Latin American countries to introduce appropriate legislation on divorce in 1905, he was surprised that a nation as advanced as Ireland still denied its citizens that fundamental right.

95. The fact that the Covenant was not yet incorporated in national legislation posed a major problem, despite the Attorney General's claims that the current system did not jeopardize its implementation. It was undeniable that the provisions of the Covenant would be applied much more easily if they could be invoked before national courts.

96. In spite of the detailed explanations given by the Attorney General, there remained some confusion surrounding the legislation governing the state of emergency in the country. While a more thorough examination of the legislation in question would undoubtedly prove useful, further improvements were none the less required.

97. Lastly, he observed that the legal aid available, above all for civil cases, did not satisfy the present demands of Irish citizens. The Irish legal system appeared to be somewhat lacking in that respect.

98. Mr. FODOR commended the Irish delegation on its detailed replies to the many questions raised by the Committee, which had satisfied most of its concerns regarding inter alia the registration of political parties, compensation for miscarriages of justice and the problems of the travelling community. With regard to the latter, the special measures adopted by the Government, including the establishment of a task force and the preparation of anti-discrimination legislation, augured well for the swift resolution of that community's current problems.

99. As to discrimination issues in general, he welcomed the establishment of the Department of Equality and Law Reform and other recent developments with a view to eliminating existing discrimination. None the less, the improvement of the relevant legislation currently under review as well as the implementation of a programme on the basis of recommendations issued by the Second Commission on the Status of Women were essential.

100. He was also encouraged by the fact that Ireland had pointed to the need to review current policy and legislation on prison matters, which should deal with the availability of segregated facilities for women and young offenders. The laws in force regarding the treatment of the mentally ill and non-nationals, especially refugees, should also be looked at more closely.

101. The continuing state of national emergency remained a cause of serious concern and was not consistent with the provisions of article 4 of the Covenant. While recognizing the gravity of the terrorist attacks in the country, he failed to understand how such actions could be interpreted as a permanent threat to the life of the nation. In accordance with article 4, a public emergency should be declared for a given period of time as required, whereas the State of emergency in force since 1976 had been declared sine die. The Committee took the view that the time had come for Ireland to lift the national emergency and that there were other ways to protect the nation from terrorist attacks.

102. The ending of the state of national emergency might help to resolve other major human rights problems which hindered the proper application of the Covenant such as the existence of a Special Criminal Court and the strict laws on censorship. For instance, with the abolition of the Special Criminal Court, the principle of equality before the courts would finally prevail in the country. In that connection, he welcomed the recent judgement of the Supreme Court which had narrowed the interpretation of section 31 of the Broadcasting Act of 1961 but pointed out that further measures would be required to ensure the effective implementation of the provisions of article 19 of the Covenant.

103. In conclusion, he said that in spite of the concerns expressed, he shared the Attorney General's optimistic assessment that the civil and political rights enshrined in the Covenant were adequately protected in Ireland.

104. The CHAIRMAN, after expressing appreciation to the Irish delegation for its report and replies to the many questions raised by the Committee, said that it was nevertheless important not to lose sight of the human rights problems which remained to be resolved. The Attorney General had indicated that the Irish Government was currently reviewing some of the legislation which had caused the Committee concern and that draft bills had been submitted to the Irish Parliament in that connection. The Committee would welcome news of any developments in that area as and when they occurred and if possible prior to the publication of Ireland's second report.

105. The purpose of the dialogue with States parties was to draw on the experience of Committee members to pinpoint specific human rights problems in each country and seek appropriate solutions. While the significance of contributions from NGOs should not be underestimated, he stressed the particular importance of sustaining communication with States parties and expressed confidence that the delegation of Ireland would not disappoint the Committee in that respect.

106. Mr. WHELEHAN (Ireland) said that the dialogue established with the Committee had been both frank and extremely comprehensive. He was confident that when the Committee had had sufficient time to reflect on the documents submitted and the replies given by the Irish delegation it would realize that the human rights situation in Ireland was somewhat better than might at first appear. He confirmed the delegation's intention to give serious consideration to the Committee's observations, which had been most constructive and had never assumed an accusatory tone. The Irish delegation had participated in the dialogue in the spirit outlined by the Chairman.

107. His only regret was that, perhaps due to a question of mistaken emphasis, the Committee had not so far seemed to fully grasp the very elaborate scheme of judicial supervision of both the legislation and police authorities backed up by the non-judicial complaints system in Ireland. He was confident that the reasons for the state of national emergency and the scope of the measures taken in that connection would become more apparent following due reflection by the Committee on Ireland's overall report.

108. In conclusion, he said he looked forward to receiving the Committee's considered assessment of his country's report. He had noted that the Committee was generally satisfied with the existing human rights situation in Ireland and in particular with the efforts under way to secure further improvements in that area.

109. The CHAIRMAN suggested that the due date for Ireland's second periodic report should be 7 March 1996.

The meeting rose at 5.45 p.m.